



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/803,471

03/18/2004

Seth A. Foerster

A-1915

5508

7590

08/07/2006

Donald E. Stout
Stout, Uxa, Buyan & Mullins, LLP
Suite 300
4 Venture
Irvine, CA 92618

EXAMINER

YABUT, DIANE D

ART UNIT

PAPER NUMBER

3734

DATE MAILED: 08/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/803,471

Applicant(s)

FOERSTER, SETH A.

Examiner

Diane Yabut

Art Unit

3734

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 March 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 June 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>6/30/04; 1/3/05</u> | 6) <input checked="" type="checkbox"/> Other: <u>IDS: 2/10/05</u> |

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statements (IDS) submitted 20 June 2004, 3 January 2005, and 10 February 2005 are acknowledged. The submissions are in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statements are being considered by the examiner.

Specification

2. The disclosure is objected to because of the following informalities: The specification does not correspond to the most recently submitted drawings on 14 June 2004. It does not include brief or detailed descriptions of Figures 7-11, as well as mention new reference characters included in Figures 1-6. A revised disclosure reflecting the changes in the drawings should be submitted.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 18 recites the limitation "the cover" in line 4 of the claim. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

6. Claims 1-10, 12, 14-19, 21-22, and 24-32 are rejected under 35 U.S.C. 102(a) as being anticipated by **Grafton et al.** (U.S. Pub. No. **20030050667**).

Claims 1-7: Grafton et al. discloses a suture strand comprising a core formed of a plurality of fibers of a first material and a cover surrounding the core, which includes the first material and a second material different than the first material, the first material being a high tensile-strength, high molecular weight, high tenacity and substantially transparent material which is ultrahigh molecular weight polyethylene and the second material being polyester and nylon fibers braided with ultrahigh molecular weight polyethylene fiber (page 1, paragraphs 6 and 8).

Claims 8-9: Grafton et al. discloses the core comprising a plurality of fibers of the first material twisted together to form a core element, wherein each fiber comprises a bundle of filaments of the first material (page 1, paragraph 8).

Claim 10: Grafton et al. discloses the cover being braided around the core (Figure 1).

Claims 12 and 14-17: Grafton et al. discloses the cover comprising a plurality of fibers of the first material and a single, unitary sheath surrounding the entire cover, or a

Art Unit: 3734

coating surrounding the entire cover, and a secondary coating of a second material which comprises silicone, a friction-enhancing material (page 2, paragraph 24).

Claim 18: Grafton et al. discloses a suture strand comprising a first covering component formed of ultrahigh molecular weight polyethylene and a second covering component formed of a polymeric material surrounding the cover (page 1, paragraph 6).

Claim 19: Grafton et al. discloses a first covering component comprising an annular braid formed of a plurality of fibers of ultra high molecular weight polyethylene (Figure 1 and page 1, paragraph 8).

Claim 21: Grafton et al. discloses the second covering component being a single, unitary sheath surrounding the first covering component (page 2, paragraph 24).

Claim 22: Grafton et al. discloses the second covering component being a coating (page 2, paragraph 24).

Claims 24 and 25: Grafton et al. discloses the polymeric material being polyester, a substantially opaque material (page 1, paragraph 8).

Claim 26: Grafton et al. discloses the first covering component surrounding a core of twisted fibers (page 1, paragraph 8).

Claim 27: Grafton et al. discloses the first covering component being braided around the core (page 1, paragraph 8 and Figure 1).

Claim 28: Grafton et al. discloses the twisted fibers being formed of ultrahigh molecular weight polyethylene (page 1, paragraph 8).

Claim 29: Grafton et al. discloses the first covering component consisting essentially of a plurality of fibers of ultrahigh molecular weight polyethylene (page 1, paragraph 8).

Art Unit: 3734

Claim 30-32: Grafton et al. discloses the second covering component further comprising a secondary coating formed of a material other than ultrahigh molecular weight polyethylene, such as silicone which is a friction-enhancing material (page 2, paragraph 24).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 11, 13, 20, 23, and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over by **Grafton et al.** (U.S. Pub. No. **20030050667**) in view of **Martin et al.** (U.S. Pat. No. **6,162,537**).

Claims 11, 13, 20, and 23: Grafton et al. discloses the claimed invention except for a cover comprising a plurality of fibers of the first material and wherein each fiber is individually sheathed, or coated in the second material, or a second covering component comprising a plurality of sheath elements, or a coating, each sheath element or coating surrounding a different individual fiber of the first covering component.

Martin et al. teaches a cover comprising a plurality of fibers of a first material and wherein each fiber is individually sheathed, or covered, in a second material (col. 3, lines 61-65). Martin et al. teaches that having fibers of one material being sheathed in another material has the benefit of attaining a combination of two desirable

Art Unit: 3734

characteristics for sutures, such as fibers that are both resorbable and fiber-forming, and their specific disposition will depend on the utility of the fiber (col. 3, lines 26-67 and col. 5, lines 31-50). It would have been obvious to one of ordinary skill in art to provide a plurality of fibers of a first material wherein each fiber is individually sheathed or covered, as taught by Martin et al., to Grafton et al. in order to attain two desirable characteristics of sutures.

Claim 33: Grafton et al. discloses the claimed invention, including a suture strand comprising a first covering component comprising an annular braid formed of a plurality of fibers, except for each of the fibers in the first covering component having a first diameter and each of the fibers in the core having a second diameter larger than the first diameter.

Martin et al. discloses a suture strand with each of the fibers in the first covering component having a first diameter and each of the fibers in the core having a second diameter larger than the first diameter (col. 5, lines 59-62). It would have been obvious to one of ordinary skill in the art at the time of invention to provide fibers in the first covering component having a first diameter and each of the fibers in the core having a second diameter larger than the first diameter, as taught by Martin et al., to Grafton et al., and since applicant has not disclosed that having the fibers in the core having a larger diameter than the fibers in the first covering component solves any stated problem or is for any particular purpose, it appears that the suture strand of Grafton et al. would perform equally well with the core fibers having a larger diameter than the first covering component fibers.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. **Pokropinski et al.** (U.S. Patent No. **6,083,243**) discloses sutures that have a double coating.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Diane Yabut whose telephone number is (571) 272-6831. The examiner can normally be reached on M-F: 9AM-4PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hayes can be reached on (571) 272-4959. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

DY



MICHAEL J. HAYES
SUPERVISORY PATENT EXAMINER